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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,853	03/08/2004	Aaron Gorga	10759-00175	2447

7590 07/19/2007
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EXAMINER

WEAVER, SUE A

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
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07/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/796,853

Applicant(s)

GORGA ET AL.

Examiner

Sue A. Weaver

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-7 and 9-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants are advised that there is insufficient structure set forth in claims 1 and 9 for a mere pole with a handle and no other structure to effect the function of pivoting movement much less movement about two or three axes. In like manner there is insufficient structure set forth in claims 28 and 29 for a mere pole with a handle to effect pivoting of the handle about two axes as claimed.

2. Claims 1-7 and 9-29, insofar as they are complete are rejected under 35 U.S.C. 103(a) as being unpatentable over the reference as applied to claim 12 above, and further in view of Lu '055 in view of Schafer '064, both of record.

To have secured the handle of Lu to a parallelepiped case with the handle oriented along the top of the case in the manner taught by Schafer would have been obvious to one having ordinary skill in the art.

3. Claims 1-7 and 9-29 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Lu '055 in view of Chang '146.

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To have provided a recess in the top face to secure the pivoting handle with the major dimension oriented perpendicular to the rear face and axis of the wheels would have been obvious in view of such teaching by Chang.

4. Claims 1-6, 28 and 29, insofar as they are complete are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin et al '089 in view of either Schafer '064, both of record, or Chang '146.

Lin et al teach the provision of a towing handle on a telescoping arm which has two pivot axes as claimed. To have provided a recess in the top surface of the case to receive the handle in the retracted position such that it lies perpendicular to the axis of rotation of the wheels would have been obvious in view of the teaching by either Schafer or Chang.

5. The declaration filed on 5/15/07 under 37 CFR 1.131 has been considered but is ineffective to overcome the Lu reference.

6. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Lu reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

7. The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date

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of the Lu reference. Since the declaration was intended for a different application and claimed invention there doesn't appear to be evidence of the handle having three pivoting axes or a recess arranged in the top surface with the orientation claimed in the independent claims.

8. Applicant's arguments with respect to claims 1-7 and 9-29 have been considered but are moot in view of the new ground(s) of rejection. Claim 8 as been canceled.

9. Applicant's arguments filed 5/15/07 have been fully considered but they are not persuasive. While the construction of a pivotal handle might be understood applicant still has not provided sufficient structure to effect the pivoting about multiple axes for the handle as claimed. This is the intent of 112 6th paragraph and "means plus function". If structure was not necessary neither would "means plus function".

10. Applicant's arguments, see pages 16 and 17 of the amendment, filed 5/15/07, with respect to the objections to the drawings and specification have been fully considered and are persuasive. The objections of drawings and disclosure have been withdrawn.

11. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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Certificate of Transmission

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(Date)

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Signature: _____

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Weaver whose telephone number is (571) 272-4548. The examiner can normally be reached on Tuesday-Friday (5:30-4).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor is Anthony Stashick_. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SW



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PRIMARY EXAMINER
GROUP 3200